



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C. 20460**

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE  
 OFFICE OF GENERAL COUNSEL

December 13, 2019

**Return Receipt Requested**

Certified Mail #: 7015 3010 0001 1267 1906

**In Reply Refer to:**

EPA File Complaint No.: 03R-19-R3

Samuel Austin Caperton  
 Cabinet Secretary  
 West Virginia Department of Environmental Protection  
 601 57<sup>th</sup> Street, SE  
 Charleston, WV 25304

**Re: Request for Information**

Dear Secretary Caperton:

The U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) is requesting information to facilitate the investigation of complaint number 03R-19-R3, involving the West Virginia Department of Environmental Protection (WVDEP). ECRCO is investigating the following issues:

1. Whether the WVDEP discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7,
  - a. During its public involvement process relating to Mountaineer Gas' application for Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, including by limiting their participation and providing allegedly misleading information; and
  - b. In its process for approving and approval of Mountaineer Gas' registration under the Stormwater Construction General Permit, which allegedly resulted in the disturbance of graves on the Cemetery grounds; and

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2. Whether the WVDEP has in place and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the WVDEP's services, programs, and activities for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the WVDEP has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

ECRCO needs additional information in order to investigate the issues indicated above. Pursuant to its authority under 40 C.F.R. §§ 7.115 and 7.120, ECRCO requests WVDEP to produce the information and documents outlined in the enclosed Request for Information (Enclosure 1) within thirty (30) calendar days of receipt of this letter. Please provide any other information that WVDEP would like EPA to consider while investigating the issues in this complaint. For your convenience, WVDEP may provide electronic versions of the requested responses and documents.

After ECRCO's review of the information WVDEP provides, ECRCO may request additional information and/or documents, so please preserve all electronic communications and other documents that may be relevant to the investigation. Please provide the name and telephone number of the individual who compiled the information in response to this Request for Information, and the name and telephone number of the individual to whom ECRCO should direct any future questions.

If you have any questions, please contact Jonathan Stein, ECRCO Case Manager, at 202-564-2088, [stein.jonathan@epa.gov](mailto:stein.jonathan@epa.gov) or U.S. EPA, Office of General Counsel, Mail Code 2310A, 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460. Thank you in advance for your cooperation.

Sincerely,



Dale Rhines  
Deputy Director  
External Civil Rights Compliance Office  
Office of General Counsel

Enclosures: 1 – Request for Information  
2 – Instructions

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Angelia Talbert-Duarte  
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U.S. EPA Region 3

Jason Wandling  
General Counsel  
West Virginia Department of Environmental Protection

**Enclosure 1**  
**EPA File No. 03R-19-R3**  
**Request for Information: West Virginia Department of Environmental Protection**

Produce the following information using the instructions included as Enclosure 2. A response must be sent to the EPA within **thirty (30) calendar days** of WVDEP's receipt of this request for information letter.

**I. Public Involvement Process**

**a. Public Involvement Generally**

1. When the WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities (CSGP) is to be renewed or modified:
  - a. What is the public involvement process for the renewal or modification of WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities (hereafter "CSGP")? Please provide copies of any and all policies, guidance, procedures, etc. that apply to the CSGP public involvement process..
  - b. If the public involvement process utilized by WVDEP for renewal or modification of the CSGP is the same as for other types of permitting undertaken by WVDEP, please note that in your response.
  - c. If the CSGP public involvement process differs from how WVDEP conducts public involvement for other types of permitting, please provide that additional documentation.
2. Are there WVDEP document(s) outlining when to undertake public involvement for individual registrations under the CSGP voluntarily? If so, please provide.
  - a. Are there WVDEP document(s) guiding the public involvement process for individual registrations under the CSGP when it occurs voluntarily? If so, please provide.
  - b. If these guidance documents differ from the process conducted under the CSGP, please describe the difference(s) in procedure and provide copies of the documents that would guide a public involvement process voluntarily initiated by WVDEP that would be different from any procedure utilized when conducting a mandatory public involvement process.
3. Is there a standard process followed by WVDEP when responding to public comments received during a public involvement process:
  - a. Under the CSGP, or
  - b. Under other public involvement frameworks relating to permitting?
  - c. Please provide a copy of any such documentation.

**b. WVDEP Public Hearings for CSGP Applications**

4. Please provide copies of the criteria used to decide when to voluntarily hold a hearing for an application under the CSGP.
5. Please provide a copy of the criteria used when determining whether a voluntarily held hearing should be canceled.
6. Please provide a copy of the criteria used to determine when a canceled hearing should and should not be rescheduled.
7. Please provide copies of regulations, guidance, criteria, etc., used to determine whether and when notice is required to be re-published for an application for coverage under the CSGP to allow for additional opportunity for the public to review and provide comments.
8. Has WVDEP ever announced a voluntary hearing, then canceled the date, but rescheduled it? If so, please provide a list of those permit hearings, the location of the permitted activity, and short description of the reasons for canceling and for rescheduling it.
9. Has WVDEP ever announced a voluntary permit hearing then canceled and not rescheduled it? If so, please provide a list of those permit hearings, the location of the permitted activity, and short description of the reasons for canceling and for not rescheduling it.

**c. Public Hearing Scheduled for February 21, 2019**

10. When approving Mountaineer Gas' application for Registration No. WVR311281 (Mountaineer Gas registration) and announcing the public hearing for February 21, 2019, did WVDEP utilize EJScreen (<https://www.epa.gov/ejscreen>) or similar tools to understand the demographics of the nearby area or the area near where the pipeline was to be placed?
  - a. If so, what data did WVDEP find and how was it used? Please produce a copy of any demographic analysis conducted in relation to the issuance of this particular registration.
  - b. If none was conducted, why didn't WVDEP conduct a demographic analysis?
11. In this case, WVDEP advertised a public hearing relating to the Mountaineer Gas registration under the CSGP for February 21, 2019, and then cancelled said meeting:
  - a. Who made the decision to hold the hearing on February 21, 2019?

- b. What were the reasons that WVDEP chose to exercise its discretion to hold a public hearing?
  - c. It was claimed that WVDEP received hundreds of requests for a hearing prior to WVDEP publishing the notice in January 2019. Please provide the total number of requests WVDEP received to hold the hearing & any responses WVDEP may have sent regarding those requests.
12. As pertains to the cancellation of the February 21, 2019 Mountaineer Gas hearing:
- a. Who made the decision to cancel the Mountaineer Gas hearing on February 15, 2019?
  - b. When was the decision made to cancel the hearing?
  - c. Why was it canceled?
  - d. Was there a plan to reschedule this hearing?
  - e. If so, why did it not occur as rescheduled?
  - f. If another hearing was scheduled, was the rescheduled hearing to take place in the same location and/or general time of day as the first?
  - g. If not, why were another location and/or time of day selected?
  - h. Were there other logistical considerations and/or concerns beyond those raised by law enforcement<sup>1</sup> factored into the cancellation of this hearing? If so, please describe and provide any related documentation.
  - i. An April 3, 2019 news article<sup>2</sup> quotes several emails requesting the hearing be rescheduled before the permit was issued. Please provide copies of requests WVDEP received to reschedule the February 21, 2019 Mountaineer Gas hearing & any responses WVDEP may have sent relating to those requests.
  - j. Why did WVDEP not re-publish the Mountaineer Gas notice after Mountaineer Gas resubmitted the application for coverage on February 18, 2019?
  - k. Who made the decision not to re-publish the Mountaineer Gas notice?
  - l. When was the decision made?

## **II. Approval and Evaluation Process for the Mountaineer Gas Registration Under the Oil and Gas Constriction Stormwater General Permit (No. WVR311281)**

13. Is there a guidance or policy in place describing the review process that WVDEP undertakes for applications for individual registrations specifically for pipelines such as that requested by Mountaineer Gas under the CSGP?
- a. If so, please provide.

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<sup>1</sup> Letter from Jason Wandling, General Counsel, WVDEP, to Lillian Dorka, Director, ECRCO, EPA, Response to Acceptance (November 22, 2019), at 11-13.

<sup>2</sup> See Morgan County USA, "Caperton Approves Rockwool Pipeline Permit" (April 3, 2019), available at <https://morgancountyusa.org/?p=3992>.

- b. If there are guidances/policies followed by WVDEP for other types of individual registrations under the CSGP not already provided under the public involvement section above, please provide those.
- 14. Does WVDEP receive local approval(s) or other types of documentation from local host jurisdictions such as cities or counties as part of applications for registrations for pipelines under the CSGP? If so, please describe what type of documentation is received, and what the review process is for such documentation. Please include any WVDEP process documents to this effect.
- 15. For this particular registration application, did WVDEP receive maps and land transfers/easements from either Jefferson County or Berkeley County governments or any individual host cities/towns that this pipeline traverses? If so, what documentation was received and who provided it? Please provide copies.
- 16. Please provide ECRCO with access to any additional materials not addressed in WVDEP's response to the complaint that were utilized by WVDEP during the evaluation of the registration application for Mountaineer Gas' Route 9 Extension, either through access to the WVDEP's electronic permitting database or some equivalent means.

### III. Procedural Safeguards

*(\*: Please note that the Procedural Safeguards checklist was emailed to WVDEP General Counsel Jason Wandling on October 28, 2019. The questions below mirror the details outlined in the checklist in narrative form. For these questions only, in lieu of answering each of them in detail, you may choose to provide a copy of your own self-evaluation using that Procedural Safeguards checklist, along with any applicable accompanying documentation, rather than answering these questions. If you are choosing to provide a copy of the self-evaluation, please note that below to the effect of "see checklist" for your answers to these questions and provide applicable accompanying documentation.)*

- 17. Please confirm whether WVDEP has designated at least one Non-Discrimination Coordinator to ensure WVDEP's compliance with Title VI, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).
- 18. If WVDEP's response is "yes", please identify this individual's name, title, and contact information and describe how WVDEP ensures its Non-Discrimination Coordinator:
  - a. Provides information to individuals regarding their right to services, aids, benefits, and participation in any WVDEP program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination, as well as notice of WVDEP's formal and/or informal grievance processes and the ability to file a discrimination complaint with WVDEP.

- b. Establishes non-environmental grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with WVDEP under federal non-discrimination statutes are processed promptly and appropriately.
  - c. Ensures the tracking of all discrimination complaints filed with WVDEP under federal non-discrimination statutes including any patterns or systemic problems.
  - d. Conducts a semiannual review of all formal and informal discrimination complaints filed with the WVDEP Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by WVDEP in order to identify and address any patterns or systemic problems.
  - e. Informs and advises WVDEP staff regarding WVDEP's obligations to comply with federal non-discrimination statutes and serve as a resource on such issues.
  - f. Ensures that complainants are updated on the progress of their discrimination complaints filed with WVDEP under federal non-discrimination statutes and are promptly informed as to any determinations made.
  - g. Periodically evaluates the efficacy of WVDEP's efforts to provide services, aids, benefits, and participation in any WVDEP program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination.
  - h. Ensures appropriate training in formal and/or informal processes available to resolve complaints filed under federal non-discrimination statutes.
  - i. Provides or procures appropriate services to ensure WVDEP employees are appropriately trained on WVDEP non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.
19. Please confirm whether WVDEP currently posts its notice of non-discrimination on the website in any other general publications that are distributed to the public. Please explain whether the notice of non-discrimination includes the following:
- a. WVDEP's responsibilities for coordination of compliance efforts and whether they respond to inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 & 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.
  - b. Contact information for the Non-Discrimination Coordinator to respond to any questions about this notice or any of WVDEP's non-discrimination programs, policies or procedures.
20. What is WVDEP's process for providing non-discrimination grievance procedures to the public? How is the public informed of this process?



21. Please confirm whether WVDEP ensures that its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes are published on the WVDEP website and in print in general publications distributed to the public. Please confirm whether the grievance procedures at a minimum address the following:
- Who may file a complaint under the procedures;
  - Which processes are available, and the options for complainants in pursuing either;
  - That an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted;
  - That the preponderance of the evidence standards will be applied during the analysis of the complaint;
  - Assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs; and
  - That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.
22. Please confirm and describe WVDEP's process for providing public involvement to potentially affected and affected communities regardless of race, color, national origin (including limited-English proficiency), age, disability, and sex. Additionally, please state whether WVDEP's public participation process/procedures includes the following:
- An overview of WVDEP's plan of action for addressing the community's needs and concerns;
  - A description of the community (including demographics, history, and background);
  - A contact list of WVDEP's officials with phone numbers and email addresses to allow the public to communicate via phone or internet;
  - A list of past and present community concerns and how those concerns were answered (including any Title VI complaints or complaints relating to any of the other federal non-discrimination statutes enforced by EPA);
  - A detailed plan of action (outreach activities);
  - A contingency plan for unexpected events;
  - Location(s) where public meetings will be held (consider the availability and schedules of public transportation);
  - Contact names for obtaining language assistance services for limited-English proficient persons, including, translation of documents and/or interpreters for meetings;
  - Appropriate local media contacts (based on the culture and linguistic needs of the community); and
  - Providing the public with location/s of information repository/ies.

23. Please submit a copy of the processes, policies, and/or procedures by which WVDEP provides access to its services and programs for individuals with disabilities. Additionally, if WVDEP does not have a written policy in place, please note that in your response.
24. If WVDEP does not have a standing documented policy for providing access to its services and programs for individuals with disabilities, please describe in detail any decision-making process utilized for providing such services. Answer the questions below and then provide any other information that ECRCO may find useful:
- How does WVDEP ensure that WVDEP facilities and non-WVDEP facilities utilized by WVDEP (i.e., if WVDEP holds a public hearing at a school, etc.) are physically accessible for individuals with disabilities?
  - How does WVDEP make communities it serves aware that services for individuals with disabilities are available?
  - Are live proceedings such as town hall meetings or public hearings simultaneously interpreted into sign language? If so, what hearings? Who conducts the sign language interpretation? What are the sign language interpreters' qualifications?
  - How are resources for these disability accommodation services allocated?
  - How does WVDEP determine which disability accommodation services are needed for WVDEP sponsored public events?
25. Please provide a copy of the processes, policies, and/or procedures by which access is provided to WVDEP's services and programs for individuals with limited English proficiency (LEP). Additionally, if WVDEP does not have a written policy in place, please note that in your response.
26. If WVDEP does not have a standing documented policy for providing access to WVDEP's services and programs for individuals with limited English proficiency (LEP), please describe in detail any decision-making process utilized for providing such services. Answer the questions below and then provide any other LEP-related information that ECRCO may find useful:
- How does WVDEP make communities it serves aware that foreign language services are available?
  - Are any standardized documents translated? If so, what documents and into what languages? Who were they translated by? What are the translators' qualifications?
  - Are live proceedings such as town hall meetings or public hearings simultaneously orally interpreted into other languages? If so, what hearings and into what languages? Who conducts the interpretation? What are their qualifications?
  - How are resources for these services allocated?
  - How is it decided who receives foreign language services?

27. Please describe how WVDEP monitors and oversees compliance efforts and responds to inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.
28. Please provide, excluding employment discrimination complaints (i.e. from internal WVDEP employees relating to their employment), copies of any race, color, national origin (including limited English proficiency), age, sex, or disability discrimination complaints raised to WVDEP since 2017 through WVDEP's grievance procedures that are required by EPA's Non-Discrimination regulation for programs or activities receiving EPA assistance and WVDEP's subsequent response to those complaints. If none have been brought to WVDEP, please note that instead.

**Enclosure 2**  
**Information Request**  
**Instructions for Recipient**

Each of the following instructions applies to each and every question contained in the letter.

1. WVDEP must provide a written response to each request for information, even if such a response is a statement reflecting that no responsive information or documents exist. Each response should be preceded by the number and content of the question being answered.
2. If WVDEP's response to a question requires a scanned or hardcopy document, WVDEP must identify the filename or document title (by name, and if applicable). Make sure to correlate any hardcopy or scanned documents to a specific question. If a document is responsive to more than one question, this must be so indicated and only one copy of the document needs to be provided.
3. WVDEP may choose to either submit documents in .pdf format or as hardcopy documents. However, electronic submissions are preferred. Should WVDEP choose to produce .pdf electronic documents, do not create separate .pdf files for each page of a single document. Files publicly available online must be downloaded and submitted either in .pdf format or in hard copy. Files submitted must be those utilized in WVDEP's decision-making process, not later drafts.
4. Identify each person whom WVDEP relied on or consulted with in preparing its responses to each question of this information request. Provide the individuals' names, titles, job duties and duration of employment with WVDEP. If they are not an employee of WVDEP, identify their employer and provide their names, title, job duties and duration of employment with their employer.
5. Identify (by name, and if applicable) each document consulted, examined, or referred to in the preparation of WVDEP's response or that contains information responsive to the question, and provide a true and correct copy of each such document if not already being produced in response to another specific question. If a document is responsive to more than one question, this must be so indicated and only one copy of the document needs to be provided.
6. If requested information or documents are not known or are not available to WVDEP at the time of WVDEP's response to this information request, but later becomes known or available to WVDEP, please supplement response to the EPA within thirty (30) **calendar days** of discovery of the responsive information. Moreover, should WVDEP find at any time after submission of response that any portion is or becomes false, incomplete or misrepresents the facts, WVDEP must provide the EPA with a corrected response as soon as possible.
7. Provide a separate response to each and every question, and each and every subpart of a question.